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7                   **UNITED STATES DISTRICT COURT**  
8                   **FOR THE WESTERN DISTRICT OF WASHINGTON**  
9                   **AT SEATTLE**

10 MCKENNA DUFFY and MICHAEL BRETT,  
11 individually and on behalf of all others  
similarly situated,

12                   Plaintiffs,

13                   v.

14 YARDI SYSTEMS, INC., *et al.*,

15                   Defendants.

16                   Case No. 2:23-cv-01391-RSL

17                   **AGREEMENT REGARDING DISCOVERY**  
18                   **OF ELECTRONICALLY STORED**  
19                   **INFORMATION; AND ORDER**

20                   The parties hereby stipulate to the following provisions regarding the discovery of  
21 electronically stored information (“ESI”) in this matter:

22                   **A. General Principles**

23                   1. An attorney’s zealous representation of a client is not compromised by conducting  
24 discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate  
25 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and  
26 contributes to the risk of sanctions.

27                   2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P.  
28 26(b)(1) must be applied in each case when formulating a discovery plan. To further the  
application of the proportionality standard in discovery, requests for production of ESI and  
related responses should be reasonably targeted, clear, and as specific as possible.

1       3.     Applicability: This ESI Protocol Order will govern the production of ESI and  
 2 paper documents. To the extent that a party collected and processed documents prior to the entry  
 3 of this ESI Protocol Order, and production of such documents cannot be made in accordance  
 4 with the terms of this ESI Protocol Order, the parties will meet and confer concerning the  
 5 potential formats of the production of any such documents.

6       4.     Cooperation: The parties acknowledge their duty to work together cooperatively  
 7 throughout the discovery process. The parties agree that they will adhere to the principles of  
 8 reasonableness and proportionality. Further, the parties agree to meet-and-confer with one  
 9 another in good faith and in a timely manner to address and resolve any disputes. If the parties  
 10 are unable to resolve such disputes, either party may raise the dispute to the Court for resolution  
 11 as provided for in Local Rule 37(a) of this Court.

12       5.     While this ESI Protocol Order is intended to address the majority of documents  
 13 and data sources handled in this matter, there may be situations where the parties come into  
 14 contact with data sources, such as ESI from social media, ephemeral messaging systems,  
 15 collaboration tools, mobile device apps, and modern cloud sources. In the event such data  
 16 sources are likely to contain relevant materials, the parties agree to meet and confer in good faith  
 17 about potential production from such sources.

18       **B.     ESI Disclosures**

19       1.     Within 20 days of entry of responding to the opposing party's first sets of request  
 20 for production, or at a time mutually agreed to by the parties:

21       2.     Custodians. Each party will disclose an initial list of proposed custodians. The  
 22 custodians shall be identified by name title, and a short description of the types of relevant  
 23 information that this custodian is expected to possess. The parties agree to meet and confer  
 24 about the relevance, proportionality, and burden of the custodians.

25       3.     If, after the parties identify initial document custodians, a requesting party  
 26 determines that an additional document custodian should be added, then the requesting party may  
 27 advise the producing party in writing of the proposed additional document custodian and the  
 28 basis for the request. The parties will, 45 days following the Court's entry of an order on the

1 motions to dismiss, meet and confer regarding a protocol for consolidated requests for additional  
 2 custodians, which shall address issues including but not limited to the number of additional  
 3 consolidated requests for custodians made to each Defendant. No party shall make requests for  
 4 additional custodians in the absence of this protocol. The parties agree that, in any event, any  
 5 requesting party shall not be permitted to make requests for additional custodians, absent  
 6 extraordinary good cause, within 90 days of the close of fact discovery.

7           a.       For document custodians agreed on by the parties or ordered by the Court,  
 8 a producing party will take reasonable steps to identify whether unique responsive ESI  
 9 (including text messages and/or iMessages), if any, are located on any cellphones in the  
 10 possession, custody, or control of the producing party, and whether such unique, responsive  
 11 information, if limited in scope, can be produced in a less burdensome manner that would not  
 12 require the imaging of an entire device. For example, in the instance of a limited group of  
 13 unique, responsive text messages or instant messages, a screenshot of the communication(s)  
 14 would suffice. For those document custodians with unique, responsive ESI that is not so limited,  
 15 the parties shall, pursuant to the provisions of this protocol, produce the responsive non-  
 16 privileged communications, unless they are “synched” or saved elsewhere (e.g., on a server,  
 17 laptop, desktop computer, or “cloud” storage). The parties shall meet and confer regarding the  
 18 potential disclosure of additional information related to cellphone data, including custodial cell  
 19 phone numbers.

20           4.       Non-custodial Data Sources. A list of non-custodial data sources (e.g., shared  
 21 drives, servers, cloud storage) in the producing party’s possession, custody, or control, if any,  
 22 likely to contain responsive ESI.

23           5.       Inaccessible Data. A list of data sources, if any, likely to contain responsive ESI  
 24 (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the  
 25 data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

## 26       C.     **ESI Discovery Procedures**

27           1.       Search methodology. The parties shall timely confer to attempt to reach  
 28 agreement on appropriate search terms and queries, file type and date restrictions, data sources

1 (including custodians), and other appropriate computer- or technology-aided methodologies,  
2 before any such effort is undertaken. The parties shall continue to cooperate in revising the  
3 appropriateness of the search methodology.

4       2.     Search Terms. The parties shall meet and confer concerning the search terms and  
5 methodology to be used by the producing party and issues related to the proportionality,  
6 relevance, and burden of the proposed search methodology. If, after disclosure of the producing  
7 party's proposed search method, search parameters, and search terms, and prior to the conducting  
8 of any searches, and after a reasonable meet and confer process, a requesting party believes in  
9 good faith that the producing party's proposals regarding search, retrieval, and production would  
10 result in deficiencies in production, the requesting party may make their initial requests for  
11 different or additional search methods, parameters, or search terms within twenty one business  
12 days. To the extent that the producing party objects to the additional and/or revised terms, the  
13 parties agree that the producing party will provide information to show that the  
14 proposed/additional terms impose undue burden or do not assist in identifying potentially  
15 responsive documents.

16       a.    Prior to running searches:

17           i.    The producing party shall, with regard to structured data, disclose  
18 reasonable information regarding the databases (such as the name of the database) and queries  
19 used, and with regard to other electronic discovery, disclose reasonable information regarding  
20 the data sources (including, where relevant, the particular custodians) and search terms used, any  
21 file type and date restrictions, and any other methodology that it proposes to use to locate ESI  
22 likely to contain responsive and discoverable information. The producing party may provide  
23 unique hit counts for a search query if requested.

24           ii.   To the extent any search term or query produces a disproportionate  
25 number of hits, the parties agree to meet and confer in good faith prior to collection. The  
26 producing party may identify each search term or query returning overbroad results  
27 demonstrating the overbroad results and a counter proposal correcting the overbroad search or  
28 query.

1                   b. Upon reasonable request, a party shall disclose additional information  
 2 pertinent to the relevance of a particular discovery request or the proportionality and burden of  
 3 producing documents from a particular source or a particular type of documents.

4                   c. **Use of TAR:** If a party elects to use TAR to cull or otherwise limit the  
 5 volume of unstructured ESI subject to linear review, the parties will meet and confer in good  
 6 faith to discuss the process for the use of TAR prior to the application of TAR in those instances,  
 7 including the extent of disclosure of information related to the TAR tool's procedures,  
 8 prioritization and training of the TAR tool.

9                   3. **Structured data:** To the extent a discovery request calls for the production of  
 10 responsive ESI contained in a structured database, the producing party shall reasonably attempt,  
 11 provided it is not unduly burdensome or disproportionate to the needs of the case, to extract such  
 12 data for review by the requesting party. To the extent this is not reasonably practicable, or to the  
 13 extent a producing party contends that such a report is unduly burdensome or disproportionate to  
 14 the needs of the case, the parties shall meet and confer in good faith to discuss the requested  
 15 structured data with the understanding that the requesting party may be required to engage a  
 16 neutral third party with the appropriate skills and expertise. Production Format

17                   a. The general proposed product format for document production is set forth  
 18 in Appendix A, including relevant Metadata fields to be produced to the extent reasonable.

19                   b. The producing party must take all appropriate measures to preserve the  
 20 integrity of the underlying ESI, *i.e.*, the original formatting, the metadata (as noted below) and,  
 21 where applicable, the revision history.

22                   c. If a document is more than one page, the unitization of the document and any  
 23 attachments and/or affixed notes shall be maintained as they existed in the  
 24 original document.

25                   4. De-duplication. The parties may de-duplicate their ESI production across  
 26 custodial and non-custodial data sources, and the duplicate custodian information removed  
 27 during the de-duplication process tracked in a duplicate/other custodian field in the database load  
 28 file, and the duplicate file path information produced in the All Paths metadata field. If

1 processing and production is done on a rolling basis, updated duplicate custodians and All Paths  
 2 fields with additional values shall be provided in an overlay metadata load file. The producing  
 3 party shall identify whether the overlay replaces previously produced fields for a file or  
 4 supplements them.

5. Email Threading. The parties, at their election, may use analytics technology to  
 6 identify email threads and need only produce the unique most inclusive copy and related family  
 7 members. and may exclude lesser inclusive copies, provided that all emails with responsive  
 8 attachments are produced, regardless of their role within the thread, as determined by the  
 9 producing party's eDiscovery software analytics. Upon reasonable request, the producing party  
 10 will produce a less inclusive copy of a specific email thread so long as such a request is  
 11 proportional to the needs of the case and does not create undue burden for the producing party.  
 12 The parties agree to meet and confer regarding the proportionality and burden of such a request.

13. 6. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an  
 14 electronic format, the production of hard-copy documents will include a cross-reference file that  
 15 indicates document breaks and sets forth the custodian or custodian/location associated with each  
 16 produced document. Hard-copy documents will be scanned using Optical Character Recognition  
 17 technology and searchable ASCII text files will be produced (or Unicode text format if the text is  
 18 in a foreign language). The parties will meet and confer on the procedure to be used if the  
 19 Producing Party believes that the cost would outweigh the usefulness of scanning (for example,  
 20 when the condition of the paper is not conducive to scanning and will not result in accurate or  
 21 reasonably useable/searchable ESI). Each file will be named with a unique Bates Number (e.g.,  
 22 the unique Bates Number of the first page of the corresponding production version of the  
 23 document followed by its file extension).

24 **D. Preservation of ESI**

25 The parties acknowledge that they have an obligation, as expressed in Fed. R. Civ. P.  
 26 37(e), to take reasonable and proportional steps to preserve discoverable information in the  
 27 party's possession, custody, or control. With respect to preservation of ESI, the parties agree as  
 28 follows:

1       1. Absent a showing of good cause by the requesting party, the parties shall not be  
2 required to modify the procedures used by them in the ordinary course of business to back-up  
3 and archive data; provided, however, that the parties shall take reasonable and proportional steps  
4 to preserve all discoverable ESI in their possession, custody, or control.

5       2. Absent a showing of good cause by the requesting party, the following categories  
6 of ESI need not be preserved:

- 7           a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 8           b. Random access memory (RAM), temporary files, or other ephemeral data  
9           that are difficult to preserve without disabling the operating system.
- 10          c. On-line access data such as temporary internet files, history, cache,  
11           cookies, and the like.
- 12          d. Data in metadata fields that are frequently updated automatically, such as  
13           last-opened dates (see also Section (E)(5)).
- 14          e. Interim automatically saved drafts, as opposed to drafts saved by a user.
- 15          f. Dynamic fields of databases or log files that are not retained in the usual  
16           course of business.
- 17          g. Back-up data that is duplicative of data that is more accessible elsewhere.
- 18          h. Server, system or network logs.
- 19          i. Data remaining from systems no longer in use that is unintelligible on the  
20           systems in use.
- 21          j. Electronic data (e.g., email, calendars, contact data, and notes) sent to or  
22           from mobile devices (e.g., iPhone, iPad, Android devices), provided that a  
23           copy of all such electronic data is automatically saved in real time  
24           elsewhere (such as on a server, laptop, desktop computer, or “cloud”  
25           storage).

26       **E. Privilege**

27       1. **Production of Privilege Logs:** Except as provided otherwise below, for any  
28 document withheld in its entirety, the producing party will produce privilege logs in MS Excel  
format or any other format that permits electronic sorting and searching. Privilege logs will be  
produced to all other parties no later than 60 days after the substantial completion of the  
producing party's document production unless a different deadline is agreed to by the parties.

1       2.     **Privilege Log Requirements:** To the extent applicable, each party's privilege log  
 2 only needs to provide objective metadata (to the extent it is reasonably available and does not  
 3 reflect privileged or protected information) and a description of privileged material consistent  
 4 with Fed. R. Civ. P. 26(b)(5).

5           a.     Objective metadata includes the following (as applicable to the document  
 6 types as shown in Appendix A):

- 7              i.     A unique privilege log identifier
- 8              ii.    Custodian
- 9              iii.   CustodianOther or CustodianAll (if applicable)
- 10             iv.    Author
- 11             v.     From
- 12             vi.    To
- 13             vii.   CC
- 14             viii.   BCC
- 15             ix.    Subject or Filename
- 16             x.     Date Sent
- 17             xi.    Date Received
- 18             xii.   Date Created

19           b.     In addition to the objective metadata fields, a party must also include a  
 20 field on its privilege log entitled "Attorney/Description of Privileged Material" that, consistent  
 21 with Fed. R. Civ. P. 26(b)(5) will enable other parties to assess the claim, and a field listing the  
 22 privilege claim asserted. Where the information cannot be determined by reference to other  
 23 objective metadata, a party must manually populate on its privilege log an author and date for  
 24 any withheld document where that information is not provided by the objective metadata, unless  
 25 such information is not reasonably discernable from the document.

26       2.     **Documents Redacted for Privilege:** As an initial production matter, redacted  
 27 documents need not be logged as long as the objective metadata (i.e., to, from, cc, bcc,  
 28 recipients, date, and time, unless the privilege or protection is contained in these fields) is not

1 redacted. For redacted documents where the subject matter is not decipherable as a result of  
 2 redactions, a description of the contents of the document that is sufficient to understand the  
 3 subject matter of the document may be requested. The producing party will undertake  
 4 reasonable efforts to make limited redactions of privileged or work product information. After  
 5 receipt of the production, the requesting party may request in good faith that the producing party  
 6 create a privilege log for specific redacted documents and explain the basis for specific  
 7 redactions so long as such a request is not disproportionate to the needs or the case and is not  
 8 unduly burdensome. The parties agree to meet and confer about the proportionality and burden  
 9 of such a request.

10       3. **Challenges to Privilege Claims:** Following the receipt of a privilege/redaction  
 11 log, a requesting party may identify, in writing (by Bates/unique identified number), the  
 12 particular documents that it believes do not meet the requirements of this Order. The producing  
 13 party shall respond to such a request within 30 days. If a party challenges a request for further  
 14 information, the parties shall meet and confer to try to reach a mutually agreeable solution. If  
 15 they cannot agree, the matter may be brought to the Court.

16       4. With respect to privileged or work-product information generated after the filing  
 17 of the complaint, parties are not required to include any such information in privilege logs.

18       5. Communications between a party and its outside counsel and communications  
 19 between a Defendant's employees and its in-house litigation counsel created after September 8,  
 20 2023 are not required to be included in privilege logs.

21       6. Activities undertaken in compliance with the duty to preserve information are  
 22 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

23       7. Pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically  
 24 stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding  
 25 shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a  
 26 waiver by the producing party of any privilege applicable to those documents, including the  
 27 attorney-client privilege, attorney work-product protection, or any other privilege or protection  
 28 recognized by law. This Order shall be interpreted to provide the maximum protection allowed

1 by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained  
 2 herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI  
 3 or information (including metadata) for relevance, responsiveness and/or segregation of  
 4 privileged and/or protected information before production. Information produced in discovery  
 5 that is protected as privileged or work product shall be immediately returned to the producing  
 6 party.

7 **F. Clawback Process**

8       1. Any party or non-party may request the return of any produced material or  
 9 information on the grounds of privilege or work product protection by identifying it, stating the  
 10 basis for withholding such material or information from production, and providing any other  
 11 information that would be listed on a supplemental privilege log.

12       2. If a party attempts to clawback a document authored or received by an individual  
 13 who is scheduled for a deposition within 15 days of the date of the deposition, and the propriety  
 14 of the clawback is not resolved pursuant to F(4) prior to the date of the deposition, then the  
 15 parties will meet and confer on the appropriate course of action, which may, but need not  
 16 necessarily include: rescheduling the deposition until the issue is resolved by the Court,  
 17 conferring prior to the deposition to determine if the document may be used in the deposition  
 18 subject to agreed-upon limitations; and/or calling the Court if the clawback is made during the  
 19 deposition to determine if immediate resolution is possible.

20       3. Notwithstanding the foregoing, the parties agree that any document used by any  
 21 party in a deposition, expert report, or court filing in this action (with the exception of a motion  
 22 to determine the existence of any privilege) shall not be eligible for protection under Rule 502(d)  
 23 as a clawed-back document if the producing party does not clawback that document pursuant to  
 24 this ESI Protocol within 30 calendar days of its use. For a document used by a party in a  
 25 deposition, expert report, or court filing in this action that is clawed back after 30 calendar days  
 26 of its use, Rule 502(b) shall govern any dispute with respect to the producing party's potential  
 27 waiver of attorney-client privilege or work product protection with respect to the document.

1       4. Federal Rule of Civil Procedure 26(b)(5)(B) shall govern the clawback of  
 2 produced documents or information on the grounds of privilege or work product protection. If a  
 3 party or non-party requests the return of such produced material or information then in the  
 4 custody of one or more parties, the possessing parties shall within 7 business days: destroy or  
 5 return to the requesting party or non-party the produced material or information and all copies  
 6 thereof, or notify the producing party or non-party that it wishes to challenge the claim of  
 7 privilege or work product protection and has sequestered the material until the issues can be  
 8 resolved. The parties agree to meet and confer regarding the claim of privilege. If, at the  
 9 conclusion of the meet and confer process, the parties are still not in agreement, they may bring  
 10 the issue to the Court. A party challenging a clawback request may use the content of the clawed-  
 11 back document for the sole purpose of filing a motion with the Court under seal.

12 **G. Redactions**

13       1. In addition to any redactions required by law, a producing party may redact  
 14 personal information to the extent that the information falls within one of the following  
 15 categories: (1) information that relates to the medical or health issues of an individual, (2) social  
 16 security numbers, taxpayer-identification numbers, driver's license numbers, personal address  
 17 information and/or phone numbers, passport numbers, financial-account numbers or other bank  
 18 account information, or personal passcodes. Such redactions should be identified as "PII" on the  
 19 redactions.

20       2. Unless otherwise agreed, a party may not make redactions based on an assertion  
 21 that the data is not relevant. The only redactions permitted are on the basis of privilege and the  
 22 categories listed in G(1).

23       3. The parties agree that, where ESI items need to be redacted, they shall be  
 24 produced solely in TIFF format, or JPG format if producing documents in color, with each  
 25 redaction clearly indicated, except in the case of personal database files and Excel spreadsheets,  
 26 which shall be redacted in native format. Any non-privileged metadata fields reasonably  
 27 available shall be provided. The parties understand that for certain MS Excel documents or other  
 28 file types or files, TIFF redactions may be impracticable. These documents may be redacted

1 using litigation database applications that can redact native Excel files, or in native format by  
2 inserting “[REDACTED]” in the cells from which data has been deleted before production.

3 **H. Non-Party Discovery**

4 1. A party that issues a non-party subpoena (the “issuing party”) shall include a copy  
5 of this ESI Protocol Order with the subpoena.

6 2. The issuing party shall be responsible for producing any documents obtained  
7 under a subpoena to all other parties.

8 3. If the non-party production is not Bates-stamped, the issuing party shall endorse  
9 the non-party production with unique prefixes and Bates numbers prior to producing them to all  
10 other parties.

11 DATED: May 6, 2024

Respectfully submitted,

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## ORDER

Based on the foregoing, IT IS SO ORDERED.

Dated this 7th day of May, 2024.

Mrs Casnik

Robert S. Lasnik

UNITED STATES DISTRICT JUDGE

1 APPENDIX A

2 **PRODUCTION FORMAT PROTOCOL**

3 **I. DEFINITIONS**

4 The following definitions and terms shall apply in this APPENDIX A:

- 5 1. “Document” carries its broad meaning consistent with Fed. R. Civ. P. 34 and  
6 includes ESI and hard copy/paper material. A draft or non-identical copy is a  
separate Document within the meaning of this term.
- 7 2. “ESI” means electronically stored information, and carries a broad meaning  
8 consistent with Fed. R. Civ. P. 34(a) and Fed. R. Evid. 1001.
- 9 3. “Extracted Text” means the text extracted from a Native File, and includes all  
10 header, footer, and document body information.
- 11 4. “Load File” means a load utilization file, which is an electronic file containing  
12 information identifying a set of paper-scanned images or processed ESI, and  
13 containing: (i) an indication of which individual pages or files constitute each  
14 Document, including attachments, and links to the Static Images associated with  
15 each Document; (ii) links to any Native Files, where native files are being  
16 produced, including attachments, associated with each Document; and (iii) data  
17 relevant to each individual Document, including extracted and user-created  
18 Metadata and coded data.
- 19 5. “Metadata” means: (i) information associated with or embedded in a Native File  
20 that does not constitute the primary content region of the file; and (ii) information  
21 generated automatically by the operation of a computer or other information  
22 technology system when a Native File is created, modified, transmitted, deleted,  
23 or otherwise manipulated by a user of such system.
- 24 6. “Native File” or “Native Format” refers to ESI that is produced in the format in  
25 which it was maintained (e.g., an Excel document produced in .xls format would  
26 be produced in native format).
- 27 7. “OCR” means the optical character recognition file that is created by software  
28 used in conjunction with a scanner that is capable of reading text-based  
documents and making such documents text searchable using appropriate  
software.
- 29 8. “Producing Party” means the party producing Documents in response to any  
30 request for production of documents pursuant to Fed. R. Civ. P. 34(a) or for any  
31 other reason.
- 32 9. “Requesting Party” means the party receiving a production of Documents in  
33 response to any request for production of document(s) pursuant to Fed. R. Civ. P.  
34(a) or for any other reason.

10. “Image(s)” means a representation of ESI produced by converting a Native File into a standard image format capable of being viewed and printed on standard document review systems. Tagged Image File Format (TIFF) and JPG images are examples of Static Images.

## OVERVIEW

**The production format has four main components.**

1. A directory containing images of every page of every Document in the production, Bates-numbered sequentially.
  2. A directory containing Native Files for a subset of the Documents, each file named with the Bates number of the first page of the Document it represents and the confidentiality designation, with no additional text beyond this, and with the same extension as the original Native File type of the Document.
  3. A directory containing OCR or Extracted Text files, one file per Document, each file named with the Bates number of the first page of the Document it represents with no additional text beyond this, followed by “.txt” suffix.
  4. Load Files containing the Metadata for each Document in .DAT file format, and an image load file in .OPT format that provides relative links to every page of the images associated with the documents referenced in the accompanying .DAT load file.

## **II. FORMAT FOR PRODUCTION**

## **Commencement of Production.**

The production of Documents shall proceed at such time, place, and in such sequence as allowed under the Federal Rules of Civil Procedure, as agreed to by the parties, or permitted by the Court.

## **General Format of Production.**

Documents that are produced in these proceedings, whether originally stored in paper or electronic form, shall be produced in electronic image form, where reasonably feasible. Notwithstanding the foregoing provisions of this paragraph, the parties reserve the right to request that an alternative format or method of production be used for certain Documents, if such Documents are not susceptible to production in the format or methods of production addressed herein. In that event, the parties will meet and confer to discuss alternative production requirements, concerns, formats, or methods.

1      **Production Format.**

2      All documents shall be produced in the following formats when reasonably feasible:

3.      **Electronic Production of Paper Documents.** Documents that are maintained in  
4      paper format shall be scanned at 300 x 300 dots per inch (DPI) or greater  
5      resolution, in single-page Group IV TIFF format, and shall reflect the full and  
6      complete information contained in the original Document. Hard copy Documents  
7      shall be produced with associated OCR files at the same time that the TIFF files  
8      are produced and with a Load File that includes at least the following Metadata  
9      fields: Begin Bates; End Bates; Begin Family; End Family; Pages; TextPath;  
10     Placeholder; File Extension; Custodian; All Custodians; Confidentiality; and  
11     Redacted, as those fields are described in Section III, below. If color is material to  
12     the understanding of a document, the Requesting Party may request that a  
13     document be re-produced in single-page color JPG image format. When  
14     subjecting physical documents to an OCR process, the settings of the OCR  
15     software shall maximize text quality over process speed. Any settings such as  
16     “auto-skewing” or “auto-rotation,” should be turned on when documents are run  
17     through the process. Paper Documents that contain fixed notes shall be scanned  
18     with the notes affixed, if it can be done so in a manner so as not to obstruct other  
19     content on the document. If the content of the Document is obscured by the  
20     affixed notes, the Document and notes shall be scanned separately.
21.     **Production of Electronically Stored Information (ESI).** Unless otherwise  
22     specified, Document images shall be generated from electronic Documents as  
23     single page Group IV TIFF images that reflect the full and complete information  
24     contained on the original Document. If color is material to the understanding of a  
25     document, the Requesting Party may request that a document be re-produced in  
26     single-page color JPG image format. In the event a Document is redacted, the  
27     Producing Party shall withhold the redacted text for that Document. The failure to  
28     withhold such text for a redacted Document by a Producing Party shall not be  
deemed a waiver of the privilege associated with that Document.
3.      **File Structure.** The Producing Party shall produce the following sets of files with  
each production.
  - a.      **Image Load File.**
    - (1)     Every document referenced in a production image load file must  
have all corresponding images, text and metadata.
    - (2)     The name of the image load file must mirror the name of the  
delivery volume and should have an .OPT file extension.
    - (3)     The volume names must be reasonably consecutive (e.g. ABC001,  
ABC002...).
    - (4)     The load file must contain one line per image.

- 1 (5) Every image in the delivery volume must be contained in the  
2 image load file.
- 3 (6) The image key must be named the same as the Bates number of the  
image.
- 4 (7) Load files must not span across media.
- 5 (8) File should be placed in the root directory or a folder labeled  
“DATA.”

6 a. Metadata Load File.

- 7 (1) Each production has one load file, in “Concordance” style .DAT  
format.
- 8 (2) Values must be enclosed by þ (ASCII Decimal 254).
- 9 (3) Values must be separated by the “Device Control 4” character,  
ASCII decimal 20.
- 10 (4) The first line of the load file must contain the column/field names
- 11 (5) The fields Begin Bates and End Bates must be present, and the first  
fields listed in the load file.
- 12 (6) The field NativePath must be present if native files are included in  
the document production.
- 13 (7) Each subsequent row must contain the Metadata for one  
Document.
- 14 (8) Every row must have the same number of columns/fields (empty  
values are acceptable).
- 15 (9) Text must be encoded in UTF-8.
- 16 (10) File should be placed in the root directory or a folder labeled  
“DATA.”

17 b. OCR and Extracted Text Files (.TXT Files).

- 18 (1) A single text file for each Document containing all the Document’s  
pages, in text.
- 19 (2) Filenames should be of the form: <Bates num>.txt, where <Bates  
num> is the Bates number of the first page of the Document.
- 20 (3) Text must be encoded in UTF-8.
- 21 (4)

- (5) Files should be placed in a directory labeled “TEXT.”

c. Image Files.

(1) Single-page Group IV TIFF or JPG images for each Document, containing all images for that document.

(2) Filenames should be of the form: <Bates num>.<ext>, where <Bates num> is the BATES number of the first page of the document (i.e., the “Begin Bates” number), and <ext> is the appropriate extension for the image format (.tif, .jpg).

(3) Files should be placed in the “IMAGES” subdirectory.

Illegible Documents. The Producing Party and the Requesting Party shall meet and confer to attempt to resolve problem(s) related to documents that cannot be read because of imaging or formatting problems, or because they are password-protected, shall be promptly identified by the Requesting Party.

a. Native Format Documents. The parties recognize that it may be appropriate for certain Documents to be produced in Native Format, such as spreadsheets, engineering drawings, presentations or slides, and audio and video files. In all cases, unless there is no textual content, an OCR or Extracted Text file shall be produced along with the Native File. The parties agree to meet and confer regarding the production of certain file types in native format where necessary.

b. Excel and Access Databases. To the extent that responsive documents exist in Excel or another spreadsheet program, documents shall be produced in Native Format, or a format agreed to by the parties. To the extent that the document format constitutes a database created or maintained in Access or another database program, Documents shall be produced in their Native Format, or in a format agreed to by the parties, where reasonably feasible. If a database is based upon proprietary software, the parties shall meet and confer regarding the format of production, which shall be a reasonably feasible format, to enable review by the Receiving Party. An image placeholder shall be provided for each document produced in Native Format. Each placeholder shall contain the phrase “DOCUMENT PRODUCED IN NATIVE FORMAT,” or something similar, and shall be stamped with confidentiality designation and the Bates number corresponding to the native file.

c. PowerPoint Presentations (PPT). PPT presentations should be produced in Native Format (e.g., as .PPT files). PPT presentations that require redactions shall be produced in single-page TIFF or JPG format, along with speaker notes. The linked native file name should also match the Begin Bates field with the appropriate file extension. Any hidden slides or speakers notes should be included in PPT presentations.

- 1                   d. Password-Protected, Encrypted or Proprietary-Software Files: With  
 2 respect to any ESI items that are password-protected or encrypted within  
 3 the scope of review, the Producing Party will take reasonable steps to  
 4 request passwords from custodians to remove the protection and produce  
 5 an unencrypted version of the file. In the event that encrypted or  
 6 password-protected documents, which are reasonably likely to be  
 7 responsive to a document request, remain for a particular custodian after  
 8 such reasonable efforts have been made, the Producing Party shall advise  
 9 the Requesting Party. To the extent that the Requesting Party would need  
 10 to use proprietary software to view certain ESI, the Parties agree to meet  
 11 and confer regarding the next steps, if any, with respect to such ESI.
- 12                  e. Audio and Video Data. Parties should make best efforts to ensure care is  
 13 taken for collection and production of any responsive audio and/or video  
 14 data, and to preserve any Metadata that may be associated with those  
 15 items. These data types may be stored in audio or video recordings,  
 16 voicemail text messaging, and related/similar technologies.
- 17                  f. Word Documents (or similar). Microsoft Word documents (.DOC,  
 18 .DOCX, or substantially similar non-Microsoft file formats) should be  
 19 produced in single-page TIFF or JPG format for each Document,  
 20 containing all images for that document, and should be imaged in a  
 21 manner that captures tracked changes and comments. Upon the request of  
 22 the Requesting Party, documents with tracked changes and comment shall  
 23 be re-produced in color JPG image format. To the extent a Requesting  
 24 Party believes the converted image format distorts, omits, or causes  
 25 information to be improperly displayed, the Requesting Party may request  
 26 the Document in Native Format and the Producing Party shall meet and  
 27 confer to attempt to resolve the problem(s).
- 28                  g. To the extent the Producing Party produces a Document in Native Format,  
 1 the following specifications apply:  
 2                   (1) Filenames must be unique in the production, unless the content is  
 3 identical. Files should be named for the starting Bates number of  
 4 the associated Document.  
 5                   (2) The filename must retain the file extension corresponding to the  
 6 original Native Format (e.g., an Excel 2003 spreadsheet's  
 7 extension must be .xls).
5. Color. For any non-native documents where color is material to the understanding  
 6 of the document or parts thereof (e.g., pie and bar charts), the document shall be,  
 7 at the request of the Requesting Party, re-produced as single page color JPG  
 8 images, or documents that need to be produced in color may be produced in  
 9 native format. Otherwise, non-native document images may be produced in black  
 10 and white.

- 1       6. **Production Media.** A Producing Party may produce Documents electronically (via  
 2       secure FTP, for example), or on an external hard drive, DVD, CD-ROM, or such  
 3       other readily accessible computer or electronic media as the Producing Party and  
 4       the Requesting Party may hereafter agree upon (the “Production Media”).  
 5       Production Media should be labeled on its face with the production date, the  
 6       production volume, the Bates range contained on the Production Media, and any  
 7       confidentiality notation that may be required by the Protective Order entered in  
 8       this case. Where not practicable to label Production Media on its face, a letter or  
 9       email with the required information should be provided. If the Producing Party  
 10      encrypts or “locks” the production, the Producing Party shall include, under  
 11      separate cover, instructions regarding how to decrypt the files, and any necessary  
 12      passwords.  
 13      7. **Document Unitization.** When scanning paper documents into Document images,  
 14      they shall be unitized in a manner to maintain the Document(s) and any  
 15      attachments as they existed in their original state, as reasonably feasible. Any  
 16      applicable folder structure information should also be provided. Responsive  
 17      attachments to e-mails stored shall be produced contemporaneously and  
 18      sequentially immediately after the parent e-mail.  
 19      8. **Duplicates.** A Producing Party who has more than one identical copy of an  
 20      electronic Document (i.e., the Documents are actual duplicates) need only  
 21      produce a single copy of that Document if the documents do not have any  
 22      attachments. Document families that are exact duplicates on the family level may  
 23      only be deduplicated when the parent email/document and all attachments are  
 24      exact duplicates. For avoidance of doubt, a Producing Party may de-duplicate  
 25      actual duplicate documents across custodians, but all custodians should be  
 26      identified in the All Custodians and duplicate file paths shall be identified in the  
 27      All Paths metadata fields.  
 28      9. **Bates Numbering.** Each Producing Party shall Bates number its production(s) as  
 follows:  
 a.     Each Bates number should consist of a unique identifier consisting of a  
 prefix, followed by nine numbers (e.g., ABC00000001). The prefix  
 should be substantially similar for all pages produced by the same  
 Producing Party throughout this litigation, and the bates sequence shall not  
 contain spaces. Each page of a Document must have its own Bates  
 number, and Bates numbers should be sequential.  
 b.     **Document Images.** Each page of a produced Document shall have a  
 legible, unique page identifier (Bates number) electronically “burned”  
 onto the image at a location that does not unreasonably obliterate, conceal,  
 or interfere with any information from the source Document. No other  
 legend or stamp should be placed on the document other than a  
 confidentiality designation (where applicable), a privilege designation, or  
 a redaction stamp (where applicable). For confidential documents the  
 confidentiality designation shall be “burned” onto each Document’s image

1 at a location that does not unreasonably obliterate or obscure any  
 2 information from the source Document.

- 3       c. Native Format Documents. In order to preserve the integrity of any Native  
 4 Format Documents that will be produced, no Bates number,  
 5 confidentiality legend or redaction information should be added to the  
 content of the Native Format Document. Each native should have an  
 individual Bates number assigned in the file name.

6 If documents cannot be rendered to a readable TIFF/JPG format, and the document needs  
 7 to be redacted for personally identifiable information or privileged content, the native documents  
 8 may be redacted by creating a new copy of the native document and inserting “Redacted” or  
 9 similar language where the protected content is located. In that circumstance, a copy of the  
 10 original native file will be maintained and the party will identify documents redacted in native  
 11 format in the Redacted metadata field.

### III. METADATA FIELDS

- 12       A. **For scanned hard copy documents, the Producing Party will provide the Metadata  
 13 fields below, to the extent reasonably feasible.**

FIELD NAME	FIELD DESCRIPTION
Begin Bates	The production Bates number associated with the first page of a Document.
End Bates	The production Bates number associated with the last page of a Document.
BeginFamily	Begin Bates number of first page of the parent Document of family of attachments.
EndFamily	End Bates number of the last page of last attachment to a family of Documents.
Pages	Total number of pages in the Document.
TextPath	Link to text file for the document.
Placeholder	Identifies a Document has a placeholder image (Y/N).
File Extension	The extension of the file.
Custodian	Identification of the custodian(s) from whom the file was sourced.
All Custodians	Identification of all custodians of the document.
Confidentiality	Confidentiality designation.
Redacted	(Y/N) field that identifies whether the document is redacted.
Production Volume	Production volume number (e.g., VOL001, VOL002, etc.).
Producing Party	Name of party producing the Document.

- 1       **B. For ESI and documents that were originally stored in electronic format, all fields  
2       below should be provided, to the extent reasonably feasible. Unless otherwise agreed  
3       by the parties, the field-naming conventions shall be as stated below, and shall be  
4       consistently applied across all productions:**

<b>FIELD NAME</b>	<b>FIELD DESCRIPTION</b>
Begin Bates	The production Bates number associated with the first page of a Document.
End Bates	The production Bates number associated with the last page of a Document.
BeginFamily	Begin Bates number of the first page of parent Document of family of attachments.
EndFamily	End Bates number of the last page of last attachment to a family of Documents.
AttachCount	Number of document attachments.
Custodian	Identification of the custodian(s) from whom the file was sourced.
All Custodians	Identification of all custodians who the Producing Party agreed to produce and where a duplicate of the Document was de-duplicated when processing the documents.
File Path	The file path from which the document was collected
All Paths	If the Producing Party engages in deduplication, then Identification of all file paths for duplicate copies
Author	Author field extracted from the Metadata of a Document or other creator identified for the Document.
From	From field extracted from the Metadata of an email message.
To	To field extracted from the Metadata of an email message.
Cc	Cc field extracted from the Metadata of an email message.
Bcc	Bcc field extracted from the Metadata of an email message.
Pages	Total number of pages in the Document.
Date Received	Datetime received (MM/DD/YYYY HH/MM/SS).
Date Sent	Datetime sent (MM/DD/YYYY HH/MM/SS).
Date Created	Datetime created (MM/DD/YYYY HH/MM/SS).
Date Modified	Datetime that a Document was last modified (MM/DD/YYYY HH/MM/SS).
Last Modified By	Identification of person(s) who last modified a Document.
Message Id	Unique Message Id.
In Reply To	Message ID of email that instant email is in reply to.
Title	Title field value extracted from the Metadata of the Native File.
Subject	Subject line extracted from an email, e-document or e-attachment.
Filename	The full name of the Native File.
File Extension	The extension of the file.
File Size	The size of the file in bytes.
MD5 Hash	The MD5 hash value of a Document.

FIELD NAME	FIELD DESCRIPTION
Document Type	Document type.
Application	Name of the application used to open the file.
NativePath	The relative path to the native file for this Document.
TextPath	The relative path to the text file for this Document.
Redacted	Whether a Document has redactions (Y/N).
Placeholder	Whether a Document has a placeholder image (Y/N).
Confidentiality	Level of Confidentiality assigned.
Track Changes	Document has track changes (Y/N).
Hidden Content	Identifies documents with hidden content ( <i>i.e.</i> , hidden rows, columns, sheets, or slides).
Speaker Notes	Document has speaker notes (Y/N).
Has Comments	Indicates there are comments in the document.
Production Volume	Production volume number ( <i>e.g.</i> , V001, V002, etc.).
Producing Party	Name of party producing the Document.